

KAUA'I PLANNING COMMISSION
REGULAR MEETING
March 12, 2019

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Mahoney at 9:01 a.m., at the Līhu'e Civic Center, Mo'ikeha Building, in meeting room 2A-2B. The following Commissioners were present:

Mr. Sean Mahoney
Mr. Roy Ho
Ms. Donna Apisa
Mr. Kimo Keawe

Absent and Excused:
Ms. Glenda Nogami Streufert

The following staff members were present: Planning Department – Deputy Director Jodi Higuchi Sayegusa, Bambi Emayo, Supervisor Inspector, and Planning Commission Secretary Leslie Takasaki; Office of the County Attorney – Deputy County Attorney Nicholas Courson Office of Boards and Commissions – Administrative Specialist Anela Segreti, Support Clerk Arleen Kuwamura

CALL TO ORDER

Chair Mahoney called the meeting to order at 9:01 a.m.

ROLL CALL

Planning Deputy Director Jodi Higuchi Sayegusa: Good morning, Chair. Good morning, Commission. Call to order B, roll call we have. Commissioner Streufart. I'm sorry. Commissioner Ho.

Mr. Ho: Here.

Ms. Higuchi Sayegusa: Commissioner Streufart is absent, excused. Commissioner Apisa.

Ms. Apisa: Here.

Ms. Higuchi Sayegusa: Commissioner Keawe.

Mr. Keawe: Here.

Ms. Higuchi Sayegusa: And Chair Mahoney.

Chair Mahoney: Here.

Ms. Higuchi Sayegusa: We have a Quorum, four members present.

APPROVAL OF AGENDA

Ms. Higuchi Sayegusa: Item C, Approval of the Agenda.

Chair Mahoney: The Chair will entertain a motion for approval of amended agenda.

Mr. Keawe: So moved.

Ms. Apisa: Seconded.

Chair Mahoney: It's been moved and seconded. Any further discussions? Hearing none? All in favor signify by saying aye? (Unanimous voice vote) Any opposed? (None) Motion carries 4:0.

MINUTES of the meeting(s) of the Planning Commission

Meeting of January 22, 2019

Ms. Higuchi Sayegusa: And D, minutes for the meeting of the Planning Commission we have on the agenda meeting we have of January 22, 2019.

Mr. Keawe: Move to approve the meeting of January 22, 2019.

Mr. Apisa: Second.

Chair Mahony: It's been moved and seconded to approve the minutes of January 22, 2019. Hearing none? All in favor signify by saying aye? (Unanimous voice vote) Any opposed? (None) Motion carries 4:0.

RECEIPT OF ITEMS FOR THE RECORD

Ms. Higuchi Sayegusa: Item E, Receipt of Items for the Record. Do we have any supplemental reports? Yes, I think those maybe a part of the Items already, so there are none.

There were no items to receive for the record

HEARINGS AND PUBLIC COMMENT

Ms. Higuchi Sayegusa: Ok. So Hearings and Public Comments. Let's see.

Chair Mahony: Is there any member of the public that would like to testify on any agenda item? Hearing none.

New Public Hearings Hearing

Zoning Amendment ZA- 2019-3: A bill for an ordinance amending Chapter 8 and Chapter 10, Kauai County Code 1987, as amended, related to Comprehensive Zoning Ordinance (CZO). The proposal amends Section 8-3.5 of the CZO relating to Enforcement, Legal Procedures and Penalties by adding Zoning Amendment ZA-2019-3 additional mechanisms for service of notice of violation and orders; adding procedures for placing and enforcing liens; and amending the amount of funds that may remain in the Planning Enforcement Account and the purposes for the expenditure of such funds. The proposal also amends Chapter 10, Kauai County Code 1987, as amended, to clarify the applicable enforcement section violations of any provision of Chapter 10= County of Kauai, Planning Department.

Ms. Higuchi Sayegusa: Ok. We're on Item F.4, New Public Hearings. Zoning Amendment ZA-2019-3: A bill for an ordinance amending Chapter 8 and Chapter 10, Kauai County Code 1987, as amended, related to Comprehensive Zoning Ordinance (CZO). The proposal amends Section 8-3.5 of the CZO relating to the Enforcement, Legal Procedures and Penalties by adding additional mechanisms for service of notice of violation and orders; adding procedures for placing and enforcing liens; and amending the amount of funds that may remain in the Planning Enforcement Account and the purposes for the expenditure of such funds. The proposal also amends Chapter 10, Kauai County Code 1987, as amended, to clarify the applicable enforcement section for violations of any provision of Chapter 10. Kauai County of Kauai Planning Department. Chair, I would recommend you open the Public Hearing.

New Public Hearing

Chair Mahoney: We open the public hearing. Is any member of the public like to testify on this agenda item? Hearing none.

Mr. Ho: Move to close the public hearing.

Mr. Keawe: Seconded.

Chair Mahoney: It's been moved and seconded. Any further discussion? Hearing none. All in favor signify by saying, Aye? (Unanimous voice vote) Opposed? Motion carries. 4:0. Thank you.

Ms. Higuchi Sayegusa: Ok. Perhaps Item F.5, all remaining public testimony pursuant to Chapter HRS Chapter 92 (Sunshine Law). Or any other items on the agenda.

Chair Mahoney: Would any member of the public care to give testimony on any other agenda items? Hearing none.

GENERAL BUSINESS MATTERS

Briefing on the State of Hawaii Department of Transportation's repair work on the Kuhio Highway damaged as a result of the April 2018 flood events on the North Shore.

Ms. Higuchi Sayegusa: Ok. Item G, nothing within that agenda Item. No executive session. So Item I, General Business Matters. I .1, Briefing on the State of Hawaii Department of Transportation's repair work on the Kuhio Highway damaged as a result of the April 2018 flood events on the North Shore. Chair, I believe we have our very own Lee Steinmetz from the Department who is able to give a briefing.

Chair Mahoney: Thank you. State your name for the record Please.

Mr. Lee Steinmetz: OK. Let me try that again. Hi. I'm Lee Steinmetz. I'm the Transportation Planner with the Planning Department. And good morning Mr. Chair and members of the Commission. So related to this topic, I believe you got a handout which includes the Hawaii Department of Transportation press release and also the County of Kauai Press release. So the first thing I want to say is I really don't have any additional information other than what has been published both the Department of Transportation and the County. And just for those who would like more information I really encourage them to visit the Department of Transportation's website which contains updates on this process. I wanted to highlight a few items in here and also just clarify a few things that people have been talking about. First of all, there is a couple different projects that HDOT is working on out on the North Shore. One is the emergency repairs that are related to the flood in April and another one is the replacement of three bridges on the North Shore and while there are definitely related there separate projects. One is considered an emergency project and the other is not. So as you look at this press release regarding the emergency work, as it says here HDOT anticipates that slopes stabilization and road way repairs between Waikoko and Wainiha will be substantially complete in April of 2019. And then it also mentions that after that date there will still be construction work and traffic impacts related to the three bridges and the date of that work is anticipated to be May 2019. And it also states related to the emergency work is the convoy, which operates to allow people to access Haena, people who live there and people who are working there that still allows the emergency work to continue. That convey will continue until such time as it's considered no longer needed. And that may or may not be the same date as the completion of the emergency work. I should also mention that, that date of the end of April is a goal and HDOT is still working on it so they have not stated yet rather they are going to meet that date or not. It also list what the cost of the work is, the emergency work is estimated to be about 77 million dollars. So anyway, I just wanted to provide an update and see if you any questions.

Chair Mahoney: OK. Is there any question for Lee?

Mr. Keawe: Yes. Lee you had mentioned that the repairs will be finished hopefully by the end of May or subsequent to that, but there is no reassurance that the access to that area would be any more different currently via the convoy, is that correct? So that there should be a possibility of the repairs getting done but still having the convoy to get in.

Mr. Steinmetz: So I guess related to that is the County's Emergency Proclamation, which is the other handout and just to be clear it's the County's Emergency Proclamation that based on the safety has limited access to only residents of Haena and workers in the area. So there is the issue

of control of who gets up there, which is based on the County's Proclamation. And then, there is the issue of the convoy which is operated by HDOT because they feel that's the only safe way to get people in and out during construction of the emergency repairs. So there is several, those things are kind of separate again but related. The issue of who has access to the North Shore is separate from the convoy. So there are several scenarios that might happen, for example, DOT may decide that to do the bridge work they no longer need to restrict access by a convoy so they might change to flag control of having flag people stopping traffic during certain times during the bridge repair. Or they may decide the convoy is needed in order to have safety, and that decision is separate from a decision about who actually can have access to the area.

Mr. Keawe: So in essence we won't actually know until we get closer to that date, whatever it might be.

Mr. Steinmetz: Correct.

Chair Mahoney: Commissioner Ho.

Mr. Ho: Lee, I hope the state is considering closing the parking access for Hanakapiai, (inaudible), those hiking trails are still closed?

Mr. Steinmetz: Yes. The hiking trails are still closed but that is under the jurisdiction of State Parks and part of Haena State Park. There are also working on implementing their master planning and getting that construction completed. So the date of when the park will be open and when those trails will be open is also unknown at this time. But they are closed at this time.

Mr. Ho: Is there still going to be parking in Haena?

Mr. Steinmetz: So, there will be, so as part of the Haena State Park master plan, so on State Park property they are constructing a, and this is consistent with the Haena State Park master plan. They are constructing a one hundred space parking lot and they will have a permit system for accessing the Park. So for people who want to access the park rather it be to go to Ke'e beach or take those trails, will need to have a permit, there is going to be a permit reservation system. Of those one hundred spaces a certain portion are going to be allocated for people who have park reservation permits and a portion will be allocated for locals who can access that parking lot without reservations. The allocation is something that is still being worked out but it might be 70 for visitors and 30 for locals or 60 – 40, we don't really know, but in order to park there, if you are a visitor, you are going to have to have a park permit to access the park and a parking reservation for one of those spaces. There is also going to be, we have been working with DOT on an additional "No Parking" signs and enforcement along the Highway because there has been before the flood, there was a big problem with people parking on the Highway and blocking the travel lanes. So there are more signs being added and we are going to working towards ramping up the enforcement of that. Parking's going to be very limited and then the next parking is at the County Beach park at Haena County Beach Park where there is currently no control over reservation for that lot but anyways, there is going to be way less parking, I should also mention, Haena State park is going to be limiting the permits to nine hundred people total, which is way

less than just daily use or what we think at least what we think was the daily use before. So there will be reduced usage due to the implementation of the Haena State park master plan.

Mr. Ho: What about food trucks?

County Attorney Nicholas Courson: Oh sorry, just to keep us on track the status item is Briefing on the State of Hawaii Department of Transportation's repair work on the Kuhio Highway damaged as result of flood so we are getting a little...we can agenda this but we are getting a little off topic.

Chair Mahoney: So I guess we can narrow the focus back to the agenda item. Is there any questions on the agenda item?

Ms. Apisa: I think this is related to the agenda item, there are rumors out there that owners with registered TVR's my somehow get access for guest to come. But it sounds like a rumor but I just don't know. Have you heard that or is there any validity to them maybe somehow getting access before the general public?

Mr. Steinmetz: So, You know the Planning Department who gets in, I can tell you that the Planning Department has been really strict about that as an owner of a residence, an owner can get a permit to have access based on the Emergency Proclamation the TVR's are not allowed to rent there space, so in theory anyway, there should not be no TVR's operating on the North Shore this day.

Ms. Apisa: Not now but the rumor was that they were going to open the Highway to them but not just go along with it. I had heard that rumor but it sounded like wishful think but.

Mr. Steinmetz: So what happens after the emergency repairs are done on the Highway and what status of emergency remains and whether TVR's are able to open at that time is that hasn't been decided yet.

Ms. Apisa: Ok, ok, thank you.

Chair Mahoney: There are probably a lot of rumors out there what we know is factual.

Mr. Steinmetz: There are a lot of rumors out there, yes.

Ms. Apisa: Right. Thank you for clarifying that, that's what I expected but I just needed to hear it.

Chair Mahoney: Any other questions? Well it seems you know...the cautiously optimistic to meet the goals and plus the amount of rain that we've had this year on top of the initial on slot has really delayed a lot but I think everybody is putting their best effort forward.

Ms. Apisa: Maybe one more quick question. As far as timing, I don't want to put you on the spot but I mean again rumor that I'm hearing there's a lot of work still to be done and I can

gather that from the website too from the status of the engineering reports and what needs to be done and they are moving it out 60 days at a time. But that's not reliable, I know owners are jumping at and anxious to start taking bookings and I'm saying no, I don't think that you should so as far as the road being open.

Chair Mahoney: Yes. Well there probably in a frenzy but the fact of the matter is its getting repaired and any construction project takes time and especially one of this nature and the weather has not been favorable for completion and I am sure there is an impetus from the Mayor on down to have it completed as fast as it can be. And doing it safely and completely and everybody wants to have it done but it has to follow its course, but the pressure is on to get it done I know that that's out there.

Ms. Apisa: And I am aware of that, like I said, I'm just saying that there are continual 60 days and this is not necessarily the last extension.

Mr. Steinmetz: Yes. I think it will like I say it will depend a lot on whether DOT is able to maintain their schedule of completing the emergency work by April and then other safety issues related to the bridge work and Yes, we don't really know yet.

Ms. Apisa: Ok. Thank you.

Mr. Courson: Commissioner Apisa just to add a point that might help to clarify as Lee was mentioning there are distinct but related things. The Emergency Proclamation can't be made for longer than 60 days. So the fact that the County keeps doing an Emergency Proclamation every 60 days is a byproduct of the State Law. That is kind of independent of DOT's estimate of when the road will open but we can't, even though DOT never thought they were going to get the road open, well at one brief point they thought they were going to get it open that quick but it became clear they weren't going to get it open in 60 days. We still kept doing it by 60 days because we don't have a choice.

Ms. Apisa: Ok. Thank you that helps to clarify a lot. Thank you. That's important.

Mr. Keawe: Thank you. That helps.

Chair Mahoney: Very informative, Thank you. Is there any further questions. Hearing none.

Status on Class IV Zoning Permit Z-IV-2015-8, Project Development Use Permit PDU-2015-7, Variance Permit V-2015-1, and Special Management Area Use Permit SMA (U)-2015-6, Tax Map Keys: (4) 4-1-003:004 (por.), 005, 007, 011, and 017 and (4) 4-1-005:014 and 017 = *Coco Palms Hui, LLC*.

Ms. Higuchi Sayegusa: OK. Item I. 2, Status on Class Zoning Permit Z-IV-2015-8, Project Development Use Permit PDU-2015-7, Variance Permit V-2015-1, and Special Management Area Use Permit SMA (U)-2015-6, Tax Map Key: (4) 4-1-003:004, lot 004, 005,007,011, and 017 and (4) 4-1-005:014 and 017 = Coco Palms , LLC. So, Dale Cua, Supervisory Regulatory

Planner, and I, we did manage to talk with Coco Palms representatives John Pang, and another representative and got a brief update, perhaps Dale can go into it a little more.

Planning Staff Mr. Dale Cua: Good Morning. Chair and members of the Planning Commission. This particular matter was before the Planning Commission back in November of 2018. In that meeting there were two specific conditions that were revised and these two conditions relate to the submittal of the building plans for the project as well as submittal of the subdivision that would enable the developer to subdivide a portion of their property in order to widen Haleilio Road, to accommodate that right turn lane for the project. So these conditions deal, these requirements deals specifically with Condition No. 15 and 21 of the project. So Condition 15, as I mentioned previously deals with the submittal of the building plans. At the Planning Commission meeting back in November, the Condition was amended to allow the applicant the additional time to submit the plans. The date, the deadline date to submit the building plans was amended from August 31, 2017 to August 31, 2019, so that's the current deadline date to submit the building plans for the project. Condition No.21, as I mentioned deals with the subdivision application. The Condition again, similar to Condition 15, was revised to allow the applicant additional time to submit the application. The deadline date was revised from January 31, 2017 to January 31, 2019, and again that is to submit the subdivision application for that left turn lane. Now the applicant did meet that obligation in terms of submitting the subdivision application for that Right turn lane. The application was officially accepted by the Department on February 4. The application has been routed to the various reviewing agencies for their review and comment. At this point the Department has tentatively scheduled this application for tentative Subdivision Map Approval. On the upcoming meeting Planning Commission meeting on April 9, 2019, so, of those two Conditions, you know the applicant has met Condition No. 21, in terms of Condition No. 15, technically, the applicant still has five more months to submit the application. Sorry, five more months to submit the plans for the project. So that where we are currently with the project. And of course there is a Condition of the permit and I believe the deadline date is at the end of June, they are required to submit annual status report on the project as well. So the next time other than the April 9th, 2019, meeting for the subdivision application, the next time you will probably see the applicant before the Commission will probably be maybe in the second meeting of June or the first meeting of July and this is in regards to the status update, the status report for the project.

Chair Mahoney: Thank you. Is there any questions for the Planner?

Chair Mahoney: Commissioner Ho.

Mr. Ho: All permits are running and is current?

Mr. Cua: They have applied for permits for you know, for demo and as far as for the re-construction of the building. So the permits are out however, there hasn't been plans assigned to the permit. So technically the applicant hasn't uploaded the plans to these permit plans. They have applied for permits but there's no plans to the permit.

Chair Mahoney: Commissioner Keawe.

Mr. Keawe: Dale so technically there's a permit but there is no plans.

Mr. Cua: Right.

Mr. Keawe: So what happens next? How long do they have to?

Mr. Cua: Well, as I mentioned the deadline date to submit the plans...

Mr. Keawe: Is in August. Right?

Mr. Cua: Is in August, right.

Mr. Keawe: Of 2019?

Mr. Cua: Of this year. Yes.

Mr. Keawe: So they basically, they've opened it but they don't have any plans in, but their deadline is in August.

Mr. Cua: Correct.

Chair Mahoney: So technically there in compliance? They haven't, the deadline hasn't come, and they still have to and are required to meet these deadlines?

Mr. Cua: Correct. Among the other Conditions of the project.

Chair Mahoney: Right. Exactly, so they have a, I understand.

Mr. Cua: So in that upcoming meeting for in the summer regarding the status report, what I plan to do is break down the requirements and conditions into a matrix format so that you can see what the condition reads and rather the applicant has met those requirements.

Chair Mahoney: Commissioner Ho.

Mr. Ho: You said that something will come before the Subdivision Committee?

Mr. Cua: Yes. The Subdivision application involving the subdivision for a portion of the property that will event...the purpose of the subdivision is to accommodate that right turn storage lane.

Mr. Ho: Haleilio Road?

Mr. Cua: Correct.

Mr. Ho: Is this a tentative or final?

Mr. Cua: For tentative.

Mr. Ho: Tentative?

Mr. Cua: Correct.

Chair Mahoney: Any...Commissioner Keawe.

Mr. Keawe: Just one last thing. So as far as the Planning Department is concerned the current status of Coco Palms is that they are complying with the Conditions that were laid out, the revised Conditions that were laid out the last meeting in November of 201 (Inaudible)? Ok.

Mr. Cua: Correct

Chair Mahoney: And also, I think you mentioned June the status report will be more comprehensive report and then we will be able to see the overall picture clearly?

Mr. Cua: Correct. Yeah, what the Department would like to do is actually have the applicant break down the requirements and see where they are in relative to those specific requirements.

Chair Mahoney: I think that would be an important step.

Mr. Ho: The time of this, they will brief us in June but his permits and his plans aren't due until August?

Mr. Cua: Yes.

Chair Mahoney: But June is the scheduled status report anyway so and then the requirements still in place for August. But June will be a comprehensive report I think we will all be able to see a lot more clearly everything that's out there. So is there any other questions for our Planner?

Ms. Apisa: No questions.

Chair Mahoney: Thank you very much Dale as usual.

1. Briefing on the Administration's enforcement efforts as it relates to Transient Vacation Rental (TVR) Regulations.

Ms. Higuchi Sayegusa: The next Item is Briefing on Administration's enforcement efforts as it relates to the Transient Vacation Rental (TVR) Regulations. Hopefully our Attorney is okay with this but perhaps this week we can take the briefing along with, can we go back to the action item for the Zoning amendment its sort of related together, it sort of fits nicely together.

COMMUNICATIONS (For Action)

Zoning Amendment ZA- 2019-3: A bill for an ordinance amending Chapter 8 and Chapter 10, Kauai County Code 1987, as amended, related to Comprehensive Zoning Ordinance (CZO). The proposal amends Section 8-3.5 of the CZO relating to Enforcement, Legal Procedures and Penalties by adding Zoning Amendment ZA-2019-3 additional mechanisms for service of notice of violation and orders; adding procedures for placing and enforcing liens; and amending the amount of funds that may remain in the Planning Enforcement Account and the purposes for the expenditure of such funds. The proposal also amends Chapter 10, Kauai County Code 1987, as amended, to clarify the applicable enforcement section violations of any provision of Chapter 10= County of Kauai, Planning Department.

Ms. Higuchi Sayegusa: And so, J, Communications For Action Zoning Amendment ZA-2019-3: A bill for an ordinance amending Chapter 8 and Chapter 10, Kauai County Code 1987, as amended, related to Comprehensive Zoning Ordinance (CZO). The proposal amends Section 8-3.5 of the CZO relating to the Enforcement, Legal Procedures and Penalties by adding additional mechanisms for service of notice of violation and orders; adding procedures for placing and enforcing liens; and amending the amount of funds that may remain in the Planning Enforcement Account and the purposes for the expenditure of such funds. The proposal also amends Chapter 10, Kauai County Code 1987, as amended, to clarify the applicable enforcement section for violations of any provision of Chapter 10. County of Kauai Planning Department. So first off I want to mention Kaaina, he of course has been very much intimate with the program and has really helped to shape and grow the program. Unfortunately, as it happened there is a Bill at the legislature that's being heard, it's at 9:00 o'clock before the House Committee on Tourism and International affairs. It survived the Senate crossed over and is now before the House Committee so he was held away there last minute as of yesterday morning. Scheduled flights to meet with the Chair Committee and then was schedule to appear before the Committee along with the Mayor and a couple of our enforcement team members. He wanted to be here of course to give you the best briefing possible but I am going to do my best, but it sort of relates because you know, it is a major priority of this Department. So just to give a briefing as best as I can on the program and the operations so far, as you know we do have an enforcement team it's about six people on the team. There is one staff dedicated to SMA Violations, and one that is dedicated to CZO Violations, so that's every other code violations that are not TVR's and they operate more on a complaint bases. And then we have the rest four, two other are dedicated to TVR enforcement and two other supervisors who spend most of their time substantial amount of their time on TVR enforcement. They operate not on complaint base, they're actively going out and spending time trying to find and locate illegal TVR operations. And so they are more of a not just complaint base, they have more resources were dedicated in that regard based on a lot of the discussions a couple years back before the County Council which sort of and the Administration to focus on this type of problem that we are facing across the island. And so there are a lot of legal TVR's as you know, those folks who are operating within the VDA's, they are legal. There are thirty-four to thirty-five hundred legal TVR's within the VDA. Technically, those require a Class I Permit, There are permits that should have been issues but because most of the efforts and the need is to really police the illegal operations, and we have decided not to focus requiring

those Class I Permits within the VDA. There is also non-conforming use certificate holders that's about four hundred-twenty.

Mr. Keawe: How many?

Ms. Higuchi Sayegusa: Four hundred-twenty.

Ms. Apisa: Those are the registered TVR and NC?

Ms. Higuchi Sayegusa: Yes, That hold a Non-Confirming Use Certificate. And they are required to every year re-certify year by year. Again most of the efforts are spent actively monitoring the web for these illegal operations that are advertising. And it's an on-going type of duty because once you find out or catch illegal advertising and they cease the operations often they pop back up again, so it's really an on-going, on-going, type of operation. I think at this point we are sort of looking out and it's a new...not only is it just that folks are advertising on their own but the creation of third party platforms like Air BNB, VRBO, or Home Away, Flip Key those types of services its really revolutionizing the industry and allowing a lot more people to advertise their TVR operations and so it's really exponentially made the problem even worse for us to be able to catch up with the advertising and the TVR's that are being advertised illegally that aren't within the VDA or who have NCUC certificates. I think I wrote these down, you know it's estimated around, last year it was estimated around 4400 listings, unique listings, that were found on any of the various platform sights and recently we were notified that the active listings at this point are about 7000. And so there is about a 30% growth even within a year. And so and of course once you folks get notification that they are illegal often times they shut down and go quiet then pop back up again. And a lot of, and of course a lot of folks, with the hosting platforms and also people are just becoming more sophisticated with their techniques. They don't post until the weekend or really late hours at night when our inspectors are not, they assume our inspectors are not out and scanning the websites for those types of advertising. Little do they know though some of our inspectors are very dedicated and actually come in on the weekend and do check and do pull clippings at all hours even through the weekend, but really, its exponential at this point you know. Going over some of the numbers briefly just to sort of paint a picture of the gains we've gotten over the years in 2015, there was about 77 Zoning Compliances Notices set out, and so that's the initial notice after there is a complaint received or a violation that's ferreted out by our inspectors and documented they are sent an initial notice and that's a Zoning Compliance Notice. They are given an opportunity subsequently to comply within at least a two week period to come and show that they have taken down their sites and they fully intend to come into compliance and once that is confirmed, we count them as a closure. Otherwise, they are issued a second notice of violation if they are continuing to advertise within that two week period that they are able to come into compliance and some of those cases of course are appealed, some of those cases at that point closed. So going back into 2015, 77 Zoning Compliance Notices were issued and in that year about 109 operations were confirmed closed. We gathered around \$23,750.00 dollars in fines that year.

Mr. Keawe: May I ask her a question?

Chair Mahoney: Yes. Well why you don't let her finish her presentation and then hear your questions. Because Commissioner Ho has some two.

Ms. Higuchi Sayegusa: OK. In 2016, about 74 Zoning Compliances were issued, 86 Closures were confirmed and we collected at that point roughly around \$29,050. 00 dollars in fines. In 2017, we shifted to focus on on-line monitoring and we got a little bit more sophisticated in our fine process so we issued a 100 zoning compliance notices and confirmed about 68 closures and we were able to collect \$76,600.00 worth in fines. So a lot more of it, a lot more fines collected in that year. We are still working through the 2018 numbers. A major issue thing that happened of course as you know in 2018 was the Rain 18 event so a lot of our inspectors and the enforcement guys were pulled to help to respond to the Rain 18 event. So they were out in the field and also responsible for taking on the issuance of the placards to enter the area beyond Wainiha and part of the reason I think because there was a concern that there were illegal TVR's that were continuing to be operated even through the disaster event, subsequent to the disaster event. So a lot of the efforts of our enforcement team were distracted because we had to, they were spent doing that, we are still working through the numbers. You can tell through the years the program has really come a long way we are collecting more fines we are issuing a lot more, so in compliance notices so of course, the focus now is really the advertising by a third party hosting, and that's something that we really need to do. So as a result of that and realizing that I guess the name of the game here is advertising via Air BNB for instance. We are, the Planning Director and I, while I was an Attorney still, we attended the American Planning Association, APA conference in New York City and at that conference we realized that there were a lot of vendors there promoting their services, software services to track all these hosting platforms. So what they do is they, I'm not going to get to deeply involved in what the techniques the use but basically they have software that scans the web, the websites, and those third party hosting sites and compiles information and is able to provide a location. A lot of these third party hosting sites they don't provide the exact address which of course really creates a problem for enforcement folks and we need to verify that it is certain property at a certain location that is engaging in the illegal TVR's. And so this software services will be able to track that on an on-going daily bases, a lot more quicker and more sophisticated that we can ever do via our three to four inspectors. And so, a lot of these services have about an 85% success rate, I mean at this point our abilities are about a 100 with our inspectors efforts about a 100 a year to confirm shut down, illegal TVR operations to be confirmed right. If we can increase this number by 500 to 600 a year that's a huge step up in the program and that's something that we are trying to do. We went through an RFP process, request for proposals, we got three vendors that responded with proposals. We are in the process of awarding one we are working through the procumbent process, so we are very close and when contracting with one service to help us to do a lot of the on-line monitoring. And that should help our efforts, of course it is a contract it is a contract so it's an on-going year by year type of fee and also there may be a lot more litigation as a result of that. Of the 100 or so closed every year, I think we still have about 40 cases logged in contested case. And that's based off of our efforts over the past year, a lot more monitoring, a lot more ZCN's going out. There is going to be we anticipate a huge wave of contested cases. So to give a little over view of the long run plays of which we have in mind for this whole issue, currently through the legislature there is a couple Bills still alive, primarily that we have our eyes on SB1292, that again is mostly a State of Hawaii Department of Tax Bill that attempts to require TVR's to also have to pay their fair share of TNT. But embedded within that Bill there are

requirements that Air BNB not advertise or not put these certain TVR operations on their Websites unless they confirm that these operations are registered, registered meaning also being compliant with State and County laws and Zoning laws in particular. It also at this point is requiring that Air BNB verify compliance with State County laws and Land Use laws. And it also requires them to take sites down once their notified by the County that they are not compliant, they are not compliant with Land Use laws. It also requires for Air BNB to periodically provide information to the Counties so we are able to cross check that information with addresses within the VDA and take those out and cross check those listings and that information that they provide to us with those that have NTUC's and the rest of them are obviously going to be illegal, they are not going to be not VDA or not None Conforming Certificate Use holders and that should really help our efforts and focus our efforts to issue ZCN's to those that are illegally advertising. So that will be a very important mechanism that we are trying to pursue and that's already existing in the current SB1292. There is a concern that in addition to that we in previous testimony were asking that the Counties have explicit authority via an amendment to HRS for Chapter 46 to give the Counties the authority to regulate third party hosting platforms and their business activities. Not sure where that's going to go, honestly. There's other mechanisms that we're trying to make sure that we are able to pursue and its, so if the periodic reporting doesn't work we would still want the ability to subpoena records so just some mechanism to compare what's being advertised with what's legal or not legal. So that's going on at the legislature and again, those mechanism are modeled after San Francisco law. They have ordinances that have requested and have been upheld to do the same things that we are seeking at this point. And also Santa Monica, California has an ordinance that has and actually went through the legal system and is up in appeal in the ninth circuit. Because of course, there are challenges by the likes of Home Away and Air BNB to any efforts to try to regulate their activity. A lot of their claims are related to Federal law and then also whether we have the authority to do so or not. Those are things that in the long run we are trying to pursue and sort of distilling and making its way through the legislature. We are tracking other efforts in other jurisdiction in Californian, for instance. I guess I'll take some questions at this point, I guess this is an overview to lead in to the bill and what we are asking for to but I can pause here for any questions.

Chair Mahoney: Ok. At this time I would like to go to Commissioner Ho and then Commissioner Keawe.

Mr. Ho: You said some of the older ones that were fined and they closed themselves and they came right back.

Ms. Higuchi Sayegusa: Right.

Mr. Ho: Do you know why they came? Do they not fear the fines?

Ms. Higuchi Sayegusa: Yes. I mean folks, I think that there is too much money in this industry so it's more of you know, let's roll the dice and run the risk again because there is too much revenue at play here.

Mr. Ho: Is the fine structure still the same as the first time?

Ms. Higuchi Sayegusa: Yes. Currently the ordinance puts it at maximum \$10,000.00 per violation. We do have a Bambi Emayo, Supervisory Inspector here so if you have any detailed questions he's also here and available.

Chair Mahoney: Ok. Can I say something before we a... you know back to the bill, kind uh, the essence is to give more tools to the Department to use as enforcement, as sophistication gets better by the entity's that are running these, we therefore have to be able to match or surpass their efforts. So that's the gist that I got out of the presentation and uh Commissioner Keawe.

Mr. Keawe: I uh...Jody I think your briefing is fine I just can't write that fast. So it would be wonderful and you do a good job of summarizing stuff in writing so if you could just summarize your report in writing with all the numbers and figures would be most helpful for us, just to have that with us when we have to go through this, these kinds of issues to have the facts and figures. And just for our own general knowledge, I mean we get asked a whole bunch of questions, I know I do wherever I go about. Hey, what's going on with TVR'S and what about this and? So especially when it comes to what you assume would be 7000 listings and you got about 4000 legal NCUC's and that kind of stuff and there is a big gap and that's what we are talking about. We are talking about that gap which seems to be ever widening because of what you just mentioned, the money's just too great. Ok. Let's just pay this fine and get back into the business and we will pay it again. In the meantime, they're still operating and they are still generating a lot of income personally and all of the subsequent issues we have to deal with that are a result of that activity.

Ms. Higuchi Sayegusa: Right.

Chair Mahoney: Commissioner Apisa?

Ms. Apisa: No. I'm good. That was a very good report. Thank you.

Ms. Higuchi Sayegusa: I apologize again. I am trying...Of course I haven't been as intimate as uh Kaaina and the Inspectors here. If you folks, I can get into the Ordinance and the Bill, the proposed Amendments. But of course if you folks feel like you need more time, of course we can defer this and have another briefing with Kaaina here to so just keep that in mind. So getting to the Bill itself, there are four main amendments, four parts to the bill that's being amended. First off, section two, we are requesting that there be additional mechanisms to satisfy the notice requirements of to provide conformation that the Zoning Compliance Notice and that the subsequently the Notice of Violation are being served to the party responsible for the violation. We are asking for not only just service by mail and so typically it's been certified mail return receipt received. Of course, that has a cost and often times folks avoid service, they don't pick up their mail we don't get that green card back. So, the amendment here is to allow for posting of the notice so the ZCN, Zoning Compliant Notice of violation and order to pay fines that could be posted on the property at the current address based on the Real Property Tax Records. I know building is able to post stop work orders and that sort of thing and so it's just an additional tool for us to avoid having to be in this endless loop of going out and trying to serve, trying to serve and it's avoided and in addition we are asking also for the Publication Notice to be to satisfy the

notice requirements to be able to pay for and publish, provide notice that they are in non-compliance and the DCM and the notice of violation via Garden Island News Paper or Star Advertiser. Second part is the ability for us to place a lien on the property so once the violation the notice of violation is served. I'm sorry the Zoning Compliance notice is the first brush notice and then the notice of violation and then the order becomes final 30 days after that and the violation still hasn't been corrected or the fines have not been paid. We would like the ability to place a lien on the property and of course that would may be enforced whenever the properties sold but there is also an ability to use to foreclose on a property should of course the violation not be remedied it's just another tool for us to encourage compliance. Thirdly, we are requesting that the funding amount so fund 251 is that enforcement account, Planning enforcement account. Currently, it reiterates the Section 6, previous Section 5, new Section 6. It reiterates the exact expenditures for the fund that we may able to use the fund for, but we are also requesting that it be brought into education training and legal representation. Education and training is important as I mentioned, Kaaiana and I through our ability to go to these trainings, The American Planning Association training we were able to connect the dots that there is a new industry here to help us with our efforts and it sort of...the ability to be on the cutting edge to see what's the new developments in any particular industries. I think it's very important for our inspectors and for our Department to be able to remain apprised of the developments and so we are asking the funds be used for that purpose. And of course, once we are able to get on line with the contract for services to help us monitor third party hosting platforms. I mentioned we are anticipating a huge of wave if litigation and contested case appeals and so part of the ask is to allow for the ability should we need it to hire special council and its clear we are not going to use the fund for a Hearing Officer that's entirely inappropriate but its more to represent the Department and these cases. And of course the funding, the amount of the fund is currently capped at \$100,000 dollars and then every physical year it's up to whatever amount we collect in fines it gets deposited in the Planning Enforcement Account fund 251, beyond any [physical year if there is overages above \$100,000 dollars, it gets kicked to the general fund. We are asking that amount be up to \$500,000 dollars, again anticipating more expense to carry any enforcement measures through the legal system. And the last part of the bill is amending Chapter 10, which is the section which is not within the Comprehensive Zoning Ordinance per say it's more of the development plan section so that's where the community plans are codified so that's where we are going through the West Kauai community plan update, that updated plan will be lodged in Chapter 10. We have the Lihue Town core Plan which imposes certain form and character requirements within Chapter 10, and so it was identified to us that if violations are rising out of Chapter 10, what's the enforcement legal procedures associated with violations imposed by Chapter 10? For instance, if there's a dense within the Lihue Town Court or is is Core Plan is the density of 40 units per acre that was recently amended by county council and so that sort of thing it has regulatory affect. But, what's the mechanism to enforce it? And so, this amendment is linking the enforcement legal procedures and penalties back to Chapter 8, which is the rest...which is the section we rely upon for the procedures we employ for any other zoning violation procedures. So they would have to...it's just standardizing all the enforcement efforts to the same procedures for rather it's under the violation CZO, Chapter 8, or Chapter 10.

Chair Mahoney: Very good. Commissioner Ho.

Ms. Higuchi Sayegusa: Yes.

Mr. Ho: When does the lien kick in? Is the same as when you impose the fine you impose the lien?

Ms. Higuchi Sayegusa: It's a mechanism that we can choose too, we are working with our Attorneys Office of course, to choose to pursue. Once the order becomes final 30 days after the order is issued we can go after the fines that we have imposed via the notice of violation and order. Feel free to jump in at any time if I am butchering this, but we can go in and enforce the fine via court and this is an additional thing we can ask for be, the fine be imposed and placed as a lien upon the property.

Mr. Ho: But that's after the process has run its course? The case is heard by the hearing officer?

Ms. Higuchi Sayegusa: Yes, that's if they appeal.

Mr. Courson: Yes, we wouldn't attempt to lien their property until it's been proven and a final order comes down through the courts.

Mr. Ho: I mean if it does...where am I? After the hearings officer it comes back to us, we say we agree with the hearings officer, that's when the fine and the lien kicks in, right then?

Ms. Higuchi Sayegusa: Right. Unless the party doesn't appeal they just haven't done anything. Than we could go to court and say please help us enforce give us a judgement to enforce the fine and also place a lien or if they have appealed then of course it has to run its course and validate rather the underline violation sticks or not and if so, then part of the resolution is ok help us enforce the fine and perhaps place a lien if not.

Chair Mahoney: So this...do we help still enhance the process that's needed to? Yes, sure.

Mr. Keawe: That's what it seems to me... can I speak? So you said 251 fund is restricted, so what can you use the money for in there now?

Ms. Higuchi Sayegusa: Currently materials, supplies and equipment that's for facilitating inspections and enforcement.

Mr. Keawe: OK. So that does not include consultants or the reason you are asking for the difference in definitions is because you want to hire consultants to help you do something or to train staff in the latest techniques and try to (inaudible) and so the fund currently does not allow you to do that. Is that why you want to change it?

Ms. Higuchi Sayegusa: We, my understanding is that the fund has been used for services it might be a broad definition of material, supplies, and equipment. But what we're...what we're trying to make it explicitly clear that addition to services tracking services it is also for training and education and representation.

Mr. Keawe: OK. So you are expanding the definition over and above what is currently in 251? Alright, two is, your capping it at \$500,000 dollars, is that just an arbitrary figure or is that something that you have some back up as far as well we think it's going to be X amount of dollars to do what we need to do going forward that type of thing.

Ms. Higuchi Sayegusa: Right. I think through the RFP process we kind of got an estimate of how much the services ...Kaaina likes to say that the grand Cadillac and then the...

Mr. Keawe: The Chevrolet.

Ms. Higuchi Sayegusa: Yes. So at this point we have pared down the services to just the RFP scope of work is just for those services tracking outside the VDA and we've given them parameters that exclude certain marginal addresses that could be right on the edge of VDA for instance. And so...the cost of that within our means of the current threshold but we would like to do more and so that's part of the ask for the \$500,000 dollars, and so of course legal representation you can never exactly estimate how much we are going to need for that at any given year, so we feel it a fair amount.

Mr. Keawe: And so that's over and above, and over and above what's budgeted for a hearings officers specifically for cases.

Ms. Higuchi Sayegusa: Yes. This is just our representation through the appellate process.

Mr. Ho: One last question if I may. Thank you. Is our contested cases hearing is that how every County goes through it, the way we do it? Or is it particular to ourselves how we do it, contested cases? Every County does it the same way?

Ms. Higuchi Sayegusa: They should, Yes. I mean the right to appeal is sort of a basic.

Mr. Ho: You know you put up the notice of violation, they say no, they appeal, and they come to us is contested locked together in that?

Ms. Higuchi Sayegusa: More or less yes, it tracks the same type of procedure I'm not sure if they give them a little bit more time to come into compliance after the first notice or not, but under 461.5 we are required to give an opportunity to folks to come into compliance. And so there is always an initial notice compliance period and then a notice of violation and order and then the right to appeal.

Chair Mahoney: Alright so, if there is not anymore questions can we focus this on the amendment?

Mr. Keawe: OK. Can we take a break?

Chair Mahoney: OK. We will take a 15 minute caption break.

The Commission recessed this portion of the meeting at 10:06 a.m.

The Commission reconvened this portion of the meeting at 10:15 a.m.

Chair Mahoney: So okay, so at this juncture we heard from our Deputy Director and now it's...

Ms. Apisa: Shoots I left my phone in the ladies room.

Chair Mahoney: OK.

Mr. Ho: Do we have time to talk while she go get her phone? Can I ask a question?

Mr. Courson: Well actually, yeah you've temporarily lost quorum.

Mr. Ho: Oh, Oh I see, I see.

Chair Mahoney: Yes, give her a moment.

Mr. Keawe: You're right.

Chair Mahoney: Yes we have quorum again. You have your phones? Wallets?

Mr. Ho: Jody a question. Does after we make a ruling does whoever has a timing of when they can appeal our ruling?

Ms. Higuchi Sayegusa: So if for instance if you...

Mr. Ho: Uphold the hearing officer's recommendation? Do they have a time limit to which they can appeal that?

Ms. Higuchi Sayegusa: Yes they do, I don't know it off hand. Nick do you know?

Mr. Courson: I want to say its 30 days but I can double check that for you.

Mr. Ho: It's just information for me.

Ms. Higuchi Sayegusa: Yes there is a timeline to appeal though after the action of the Commission.

Chair Mahoney: Excuse me but maybe at this juncture if there might be some legal questions that we might want to pursue if we could consult with our Attorney here about moving this forward. Is there anything we should know more about what's in the body of this?

Mr. Courson: Yes. So uh this was pretty much this packet was the first time I saw this, I think the Department has consulted with my office by you know we kind of keep some levels of separation so I hadn't reviewed this before, I think because there is time and it may warrant you asking me a written opinion for you folks and going over it with you in executive. And then I

think you'd be at that point fully informed about whether you support as is or whether there's any changes you want to see. But I don't see anything in this that's so alarming that I think that's necessary, if you don't want to do that, if you are happy with what the Departments done, if it makes sense to you I think you can also feel confident and simply? Supporting it allowing it to go forward. There is still a lot of process in front of it, it will still get reviewed at the Council level. Either choice strikes me as just fine I am here at your service but you can put your faith in the Department I don't think its unwise.

Chair Mahoney: Any Commissioners have any questions?

Mr. Ho: I'm good with it moving on.

Mr. Keawe: I think you know, I hate to use the term but time is of the essence they need more tools and they need it now rather than yesterday.

Chair Mahoney: I mean there is available time if we feel that it's necessary to have a review on it and even with the Department if that's the route you want to go if not, your confident that you know, there might be something that pops up again. Our assistant County Attorney mentioned it could be caught up at Council but if everyone is satisfied at this junction with the premise of going forward...

Ms. Apisa: I'm good with it especially that increase in the cap on the funds and to use it for training and other things. Overall I am ok with it.

Chair Mahoney: Commissioner Apisa you mentioned that so if there is any questions on that did you wanted ...

Ms. Apisa: Not at this time.

Chair Mahoney: Ok well, I am not going to fish for anybody but if everybody's satisfied with that then I appreciate the comments made by the Assistant County Attorney also.

Ms. Higuchi Sayegusa: I also want to offer up we do have Bambi if you have any questions on the operations, I tried as best as I could to give an over view but of course I don't know as intimately the operations as he does so if you have any questions.

Chair Mahoney: Could we Bambi come up go to the podium please. Maybe we could just ask some of the relevant questions on the enforcement side he knows and it can enhance the conversation. If you could sit at the podium there and state your name for the record.

Mr. Bambi Emayo: Bambi Emayo, Planning Department.

Chair Mahoney: Thank you. Could you just give us a little bit about what you do, and what you know about the enforcement part and what's needed, and how this would help, briefly.

Mr. Emayo: I am the Supervisor for the Enforcement section. We are trying to increase our enforcement ability to the TVR's, the TVR section is a growing industry so what happening is basically they are finding ways to disguise themselves so that we cannot enforce. So basically, we are looking for more tools, more education methods and technique to do good enforcement.

Chair Mahoney: Any questions for?

Mr. Keawe: So Bambi, you, are you familiar with what's in front of us I mean as for as the key points that are in this particular ordinance?

Mr. Emayo: Yes.

Mr. Keawe: And you support what's in here?

Mr. Emayo: Yes.

Mr. Keawe: OK.

Chair Mahoney: Any questions?

Ms. Apisa: Just a comment, I totally believe that it's so important that technology is changing so rapidly that you need stay up on the times and kind of keep up on that so good job and thank you.

Chair Mahoney: Alright. No further questions? Thank you very much for your testimony and thank you very much for what you do for the Department I appreciate it. Ok so at this juncture is there any other questions from the Department?

Ms. Apisa: I guess just to clarify, this whole ordinance is all about going after the unlicensed permitted TVR's correct?

Ms. Higuchi Sayegusa: Actually, a lot of the provisions here would apply to any zoning violation but of course a huge amount of time and efforts in the enforcement area is spent on TVR's so this would exponentially help in TVR enforcement but also will assist Zoning and SMA violations.

Chair Mahoney: So are we clear, everybody clear on what this is about? And I think the Chair will at this time entertain a motion.

Mr. Keawe: OK. I move to approve Zoning Amendment ZA-2019-3 a bill for Ordinance amending Chapter 8, and Chapter 10, Kauai County Code 1987, as amended related to Comprehensive Zoning Ordinance (CZO). The proposal amends section 8-3.5 of the CZO relating to Enforcements, Legal Procedures and Penalties by additional mechanisms for service of notice of violation and orders; adding procedures for placing and enforcing liens and amending the amount of funds that may remain in the Planning Enforcement Account and the purposes for the expenditure of such funds. The proposal also amends Chapter 10, Kauai County

Code 1987, as amended to clarify the applicable enforcement section for violations of any provision of Chapter 10.

Mr. Ho: Seconded.

Chair Mahoney: Any further discussions? Hearing none. All in favor signify by saying aye. (Unanimous voice vote) Opposed? (None) Motion carries 4:0. Thank you very much.

COMMITTEE REPORTS

Subdivision

Ms. Higuchi Sayegusa: Next agenda Item K. none.

UNFINISHED BUSINESS

Ms. Higuchi Sayegusa: Item L, Unfinished Business we went through that.

NEW BUSINESS (For Action)

ANNOUNCEMENTS

Topics for Future Meetings

The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter at the Lihue Civic Center, Moikeha Building, Meeting Room 2A-aB, 4444 Rice Street, Lihue, Hawaii 96766 on Tuesday, March 12, 2019.

Ms. Higuchi Sayegusa: Item M, New Business and back N, Announcements. I think Dale circulated the on deck sheets. We have I guess I'm up again, we have the ADU amendment that was given us to by Council and otherwise pretty lean as I understand on permit intake at this point.

Mr. Ho: Jody is that the one they are referring to as Guest House?

Ms. Higuchi Sayegusa: No.

Mr. Ho: Is this a different one?

Ms. Higuchi Sayegusa: No. Different one, different one. So otherwise it's pretty lean...

Mr Keawe: There is only two items in right currently on the deck sheet right? The Council and the Moloa'a irrigation.

Ms. Higuchi Sayegusa: Yes, I'm sorry yes, Moloa'a, Moloa'a. So but otherwise again, Permit Intake pretty lean so two items. And the next meeting is on March 27, 2019, a Wednesday because it's a Holiday on the Tuesday of that week.

Chair Mahoney: (inaudible) Ok. Is that it? Chair will entertain a motion for adjournment.

Ms. Apisa: I move to adjourn.

Mr. Ho: I seconded.

Chair Mahoney: Moved and seconded. All in favor signify by saying aye. (Unanimous voice vote) Opposed? (None) Motion carries 4:0. Adjourned. Thank you.

ADJOURNMENT

Chair Mahoney adjourned the meeting 10:27 a.m.

Respectfully submitted by:



Arleen Kuwamura,
Commission Support Clerk

() Approved as circulated (add date of meeting approval)

() Approved as amended. See minutes of _____ meeting.